not entitled to recover because he had not offered to return the horse. The attention of the learned judge does not seem to have been directed to the pleadings, and he was doubtless led into the error of treating the case as an action of *assumpsit* to recover back the price paid for the horse by the form in which the point was presented and the question reserved. The judgment must therefore be reversed, and the cause sent back to be tried on the issue formed by the pleadings.

The gist of the action is the alleged fraud and deceit of the defendant in inducing the plaintiff to buy the horse, believing him to be of usual and ordinary health and soundness, and the plaintiff's right to recover turns on the question whether the defendant was guilty of the fraud and deceit with which he is charged. If he was not, the plaintiff is not entitled to recover though the defendant may have known that the horse was fatally diseased at the time of the sale.

Judgment reversed, and a *venire facias de novo* awarded.

United States District Court, Eastern District of Wisconsin. In Admiralty.

THE PROPELLER FREMONT.

A vessel employed on the lakes, between a port of the United States and a foreign port, having shipped a seaman on verbal promise of certain wages, and no shipping articles having been signed, the seaman may leave the vessel at any time. If the seaman has drawn the full wages promised, and does not demand more before leaving, he cannot recover a larger amount.

THE propeller was employed in trade between the port of Sarnia, in Canada, and the city of Chicago, in connection with the Grand Trunk Railroad. On the 24th of May, 1870, at Chicago, the libellant shipped on board as first mate on verbal contract with the master, at seventy dollars per month, no shipping articles being signed. Libellant continued in service on board, drawing his wages from time to time as he wanted money, until the 31st of October following, when he left the vessel at Milwaukee, having drawn his full wages at the rate of seventy dollars per month, and not making demand for any larger sum. The vessel was on a trip from Sarnia to Chicago, when libellant left, having notice to return on board as the vessel was ready to

put out, he declined or neglected to appear, and the vessel had to be navigated to Chicago without a first mate, where the master was obliged to procure another in his place. This was a libel for the difference between what he had drawn and the highest rate of wages paid during the time of his service, to persons in similar capacity.

Emmons and *Hamilton*, for libellant.

James MacAllister, for claimant.

MILLER, D. J.—It is contended on behalf of the libellant that not having signed shipping articles in a printed or written contract, he was at liberty under the law to leave the vessel at pleasure and demand the highest rate of wages.

By the act for the government and regulation of seamen in the merchant service, approved July 20th 1790 (1 Statutes at Large 131), every master of "any ship or vessel of the burthen of fifty tons or upwards, bound from a port in one state to a port in any other than an adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in print with every seaman or mariner on board such ship or vessel," &c. By the tenth article of the act, in addition to the several acts regulating the shipment and discharge of seamen, approved July 20th 1840 (5 Statutes at Large 394), "All shipments of seamen made contrary to the provisions of this and other acts of Congress shall be void, and any seaman so shipped may leave the service at any time, and demand the highest rate of wages paid to any seaman shipped for the voyage, or the sum agreed to be given him at his shipment." The general scope of this act relates to vessels bound on a foreign voyage, but the tenth article above quoted extends to and includes all shipments of seamen. Even if these statutory provisions did not embrace seamen shipped on vessels employed in the lake trade, they should be enforced by the courts as correct principles of maritime law. This vessel, at the time of the shipment and service of the libellant, was employed in trade with a foreign port. Libellant had drawn his full wages promised him at the time of his shipment, and left at his pleasure. He took advantage of the right extended to him under the Act of 1840. Before leaving the service he had not demanded or given notice that he claimed a larger amount. Libellant had a lawful right

to leave the service at Milwaukee, and having received the full wages up to that time as promised him at his shipment, he could not maintain this libel for a larger amount, if he had proven himself entitled to it, which he did not. If the master was put to inconvenience by libellant's leaving the service, it was his own fault in not complying with the law. It is the duty of every master navigating the lakes to have his seamen sign shipping articles, specifying the ports or places to which his vessel trades, and the trip or season for which they are shipped, and the wages to be paid. In cases of such neglect every legal intendment will be taken against the master and owners. It is not the fault of the seaman that shipping articles are not signed, but of the master.

It does not appear that libellant is legally entitled to any larger amount of wages than he received before leaving the service; and this libel must be dismissed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

COURT OF CHANCERY OF NEW JERSEY.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF PENNSYLVANIA.[3]

ACTION.

Where Money paid may be recovered back.—Money was paid by the plaintiff's assignors to S., in order that such assignors might become members of an association of which S. was president; but there was no evidence or finding that they ever did become such members. Subsequently the association was dissolved. *Held*, that the money having been paid for an object that was never accomplished, and which it had become impossible to accomplish, S. or his administrator was bound to refund the same: *Churchill* v. *Stone*, 58 Barb.

AGREEMENT.

Construction, what is a Warranty.—The defendants agreed to send to the plaintiffs at San Francisco "all the balance of the iron for said railroad, now lying in Boston or New York, amounting to about fifteen hundred tons, which said iron was originally purchased by C. L. W. from W. F. W. & Co. of Boston." *Held*, that this language was simply descriptive and did not constitute a warranty that the particular

[1] From C. E. Green, Esq., Reporter; to appear in vol. 6 of his reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in vol. 58 of his reports.

[3] From P. F. Smith, Esq., Reporter; to appear in 64 Penn. Rep.